

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARIE PASCHAL,

No.

v. Plaintiff,

Snohomish County Superior Court
Cause No. 14-2-06473-8

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, a foreign
insurance company,
Defendant.

**NOTICE OF REMOVAL PURSUANT
TO 28 U.S.C. §1441(a)**

(Clerk's Action Required)

TO: The Clerk of the United States District Court for the Western District of Washington;

AND TO: Marie Paschal, Plaintiff,

AND TO: Joseph W. Moore and Kent Millikan, Plaintiff's Attorneys;

PLEASE TAKE NOTICE that Defendant American Family Mutual Insurance Company (hereinafter “American Family”) hereby removes to this Court the state court action described below. In support thereof, Defendant states as follows:

1. On or about September 30, 2014, Plaintiff Marie Paschal filed a civil action in the Superior Court of the State of Washington for Snohomish County, which was assigned cause number 14-2-06473-8. Attached as **Exhibit A** is a true and correct copy of the Complaint. Attached as **Exhibit B** is a true and correct copy of the Summons.

2. On October 1, 2014, a copy of the Summons and Complaint was served on the Insurance Commissioner of the State of Washington, as statutory agent for Defendant

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C.
§ 1441(a) – 1**

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COLE | WATHEN | LEID | HALL, P.C.
303 Battery Street
Seattle, Washington 98121
(206) 622-0494/Fax (206) 587-2476

1 American Family. Attached as **Exhibit C** is a true and correct copy of the Insurance
 2 Commissioner's Certificate of Service.

3 **PARTIES**

4 3. In the Complaint, Plaintiff alleges that she is a resident of the State of
 5 Washington.

6 4. Defendant American Family is a foreign insurance company incorporated in the
 7 State of Wisconsin. Defendant American Family is licensed to conduct insurance business in
 8 the State of Washington.

9 **AMOUNT IN CONTROVERSY**

10 5. In paragraph 5.1 of Plaintiff's Complaint, Plaintiff alleges that she is entitled to
 11 insurance coverage under a policy of insurance issued by American Family under Policy No.
 12 1973-1588-02-98-FPPA-WA. Specifically, plaintiff contends that she is entitled to PIP
 13 benefits up to \$10,000, and UIM benefits up to \$100,000. See Exhibit A, ¶ 5.9.

14 6. Plaintiff also alleges bad faith claims against American Family including, but
 15 not limited to, claims that American Family unreasonably failed to conduct a meaningful or
 16 genuine investigation of plaintiff's loss or benefits owed under the policy. Exhibit A, p. 12-13.
 17 Plaintiff further alleges some 12 violations of the Insurance Fair Conduct Act. *Id* at p. 10-11.
 18 Plaintiff asserts additional claims for breach of contract and violation of RCW 19.86
 19 (Consumer Protection Act).

20 7. Where an underlying statute authorizes an award of attorney's fees, such fees
 21 may be included in the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,
 22 1156 (9th Cir. 1998). A reasonable estimate of attorney's fees likely to be expended throughout
 23

1 the entire litigation is properly included within the amount in controversy. *Miera v. Dairyland*
2 *Ins. Co.*, 143 F.3d 1337, 1340 (10th Cir. 1998).

3 8. The amount claimed by Plaintiff in her Complaint is up to \$10,000 in PIP
4 benefits and \$100,000 in UIM benefits. When trebled under the Insurance Fair Conduct Act
5 and/or Consumer Protection Act and combined with attorney's fees, this easily places the case
6 value above \$75,000.00.

7 **JURISDICTION**

8 9. For purposes of determining jurisdiction under 28 U.S.C. §1332, Plaintiff is a
9 citizen of the state of Washington. Defendant American Family is a citizen of the State of
10 Wisconsin.

11 10. The amount in controversy exceeds \$75,000, exclusive of interest and costs,
12 pursuant to 28 U.S.C. §1446 (c)(2).

13 11. This Court, therefore, has jurisdiction pursuant to 28 U.S.C. § 1332 and removal
14 is proper pursuant to 28 U.S.C. § 1441 and 28 U.S.C. §1446 (c)(2).

15 **TIMELINESS**

16 12. The Summons and Complaint were filed on September 30, 2014. Defendant
17 American Family was served with the Summons and Complaint on October 1, 2014. The date
18 of filing this Notice of Removal is within thirty (30) days from the date this matter first became
19 removable.

20 **COPY OF SUMMONS AND COMPLAINT**

21 13. In accordance with 28 U.S.C. §1446, Defendant American Family attaches to
22 this Notice, as **Exhibits A-D**, true and correct copies of:

23 **Exhibit A:** Plaintiff's Complaint;

Exhibit B: Summons to American Family;

Exhibit C: Insurance Commissioner's Certificate of Service; and

Exhibit D: Defendant's Notice of Appearance.

Exhibit E: Snohomish County Case Information Cover Sheet.

14. Notice of this removal will be filed with the Clerk of the Snohomish County Superior Court, Cause No. 14-2-06473-8 and will be given to all other parties, in accordance with 28 U.S.C. 1446(d). A copy of that Notice is attached as **Exhibit F**.

WHEREFORE, Defendant American Family respectfully requests that the above-entitled cause, currently pending in the Superior Court of the State of Washington for Snohomish County, be removed to the United States District Court for the Western District of Washington at Seattle, and that this cause proceed in the United States District Court as an action properly so removed.

DATED this 23rd day of October, 2014.

COLE | WATHEN | LEID | HALL, P.C.

/s/ **Rory W. Leid**
Rory W. Leid, III, WSBA #25075

/s/ Jonathan R. Missen
Jonathan R. Missen, WSBA #42689

Attorneys for Defendant
303 Battery Street, Seattle, WA 98121
Tel: (206) 622-0494 | Fax: (206)587-2476
rleid@cwlhllaw.com; jmissen@cwlhllaw.com

CERTIFICATE OF SERVICE

The undersigned makes the following declaration certified to be true under penalty of perjury pursuant to RCW 9A.72.085:

On the date given below, I caused to be sent out for service a true and correct copy of the foregoing on the following parties in the manner indicated:

<p><i>Plaintiff's Attorney</i> Joseph W. Moore, Jr. Olive Bearb Grelish & Gilbert 1218 Third Avenue, Suite 1000 Seattle, WA 98101 206-629-9909 WSBA #44061</p>	<p><input type="checkbox"/> Via Fax <input checked="" type="checkbox"/> Via ABC Legal Messenger <input checked="" type="checkbox"/> Via Email joseph@olivebearb.com <input type="checkbox"/> Via depositing copy into U.S. Mail 1st Class Postage Pre-Paid</p>
<p><i>Plaintiff's Counsel</i> Kent Millikan Deno Millikan Law Firm, PLLC 3411 Colby Ave Everett, WA 98201-4709 (425) 259-2222 WSBA #253</p>	<p><input type="checkbox"/> Via Fax (425) 259-2033 <input checked="" type="checkbox"/> Via ABC Legal Messenger <input checked="" type="checkbox"/> Via Email kentmillikan@denomillikan.com <input type="checkbox"/> Via depositing copy into U.S. Mail 1st Class Postage Pre-Paid</p>

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

Executed this 23rd day of October, 2014, at Seattle, Washington.

Tami L. Foster, Legal Assistant
tfoster@cwlhlaw.com